

Before the
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments) MB Docket No. 02-136
FM Broadcast Stations) RM-10458
(Arlington, The Dalles, and Moro, Oregon,) RM-10663
and Covington and Trout Lake, Washington) RM-10667
) RM-10668

To: Assistant Chief, Audio Division
Media Bureau

REPLY COMMENTS

1. Mid-Columbia Broadcasting, Inc. ("Mid-Columbia"), licensee of Station KMCQ(FM), The Dalles, Oregon, First Broadcasting Company, L.P. ("FBC"), and Saga Broadcasting Corp. ("Saga"), licensee of Station **KAFE**, Bellingham, Washington (together, "Joint Parties") hereby file their reply comments on the counterproposals submitted in the above-captioned proceeding.¹ Three parties (in addition to the Joint Parties) filed counterproposals: Triple Bogey, LLC et al. ("Triple Bogey"), New Northwest Broadcasters, LLC ("New Northwest"), and Two Hearts Communications, LLC ("Two Hearts").² Each of these will be addressed in turn.

I. The Triple Bogey Counterproposal Is Defective and Should Not Be Considered, but Even if Considered, it Compares Unfavorably to the Joint Parties' Counterproposal.

2. The Triple Bogey counterproposal is defective and should not be considered? Triple Bogey proposes to substitute Channel 281C for Channel 282C for use by Station KAFE,

¹ See Public Notice, Report No. 2599 (March 10, 2003). The Public Notice set a reply comment date of March 25, 2003.

² The Two Hearts counterproposal was not listed in the Public Notice. Nevertheless, the Joint Parties offer their comments on that counterproposal at this time.

³ The Joint Parties made a similar argument at an earlier stage in this proceeding. See Reply Comments of the Joint Parties (filed August 13, 2002).

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Bellingham, Washington, *with a power limitation* towards certain Canadian allotments.⁴ This is not a substitution that can be ordered by the Commission over the licensee's objection. *See Wasilla, Anchorage and Sterling, Alaska*, 14 FCC Rcd 6263, 6265 (1998) (rejecting proposed substitution at Anchorage because it would have required the use of a directional antenna to protect an allotment at Homer, Alaska). In earlier reply comments, Saga objected to the modification to Channel 281C based on the limited amount of reimbursement offered by Triple Bogey without an agreement which reflects the diminished value of the station. Triple Bogey has no agreement with Saga regarding such a change to KAFE. While Saga's agreement with FBC and Mid-Columbia provides for the adoption of a directional antenna for **KAFE** under the specific circumstances, procedures, and conditions set forth therein, the existence of that agreement cannot be taken to mean that Saga consents to the use of a directional antenna in connection with the Triple Bogey proposal, or any other proposal for that matter.

3. The Commission can only order the substitution of an alternate channel for an existing channel over the licensee's objection based on a finding that the substitute channel is "equivalent." *See Okmulgee, Oklahoma, et al.*, 10 FCC Rcd 12014, 12016 (1995). However, in this case, the substitution of Channel 281C at Bellingham, would require KAFE to reduce power. Clearly that proposal would not be equivalent to its current Channel 282C, from which it can operate with maximum facilities. The Commission has indicated that the inability to operate at a station's current maximum power would prevent a finding of channel equivalence. *Angola, Indiana, et al.*, 6 FCC Rcd 1230, 1232 (1990), *Wasilla, et al. supra*. Since Saga has not consented to the changes to KAFE, and the changes cannot be ordered absent such consent, its counterproposal should not be considered. *See Parker, Arizona*, 17 FCC Rcd 9578 (2002).

⁴ *See* KDUX Counterproposal at 18 and accompanying Engineering Statement at 15.

4. Triple Bogey argues, however, that this case is different because the areas that would be losing service from KAFE are entirely within the borders of Canada. It argues that the Commission has the ability to order the power decrease because as a U.S. station, KAFE is not entitled to the protection of its signal over Canada. See Counterproposal of Triple Bogey at 19 and Engineering Statement at 21, citing Agreement Between the Government of the United States of America and the Government of Canada Relating to the FM Broadcasting Service in the 88-108 MHz Frequency Band at Para. 5.2.2.4 (1991). This argument is without merit. The treaty sets forth the interference protections of FM broadcasters as agreed between the U.S. and Canada. The treaty does not give the U.S. any substantive right or power over U.S. broadcasters, for the simple reason that the government of Canada is powerless to confer such a substantive right or power upon the U.S. Otherwise the FCC could start ordering the downgrading of facilities for any station near the Canadian border based on the theory that the station is not entitled to reach any part of Canada. Such an order here would create an unfortunate precedent for all border stations. Accordingly, it is obviously erroneous to read the treaty as giving the Commission the right to order KAFE to curtail its signal over Canadian land.

5. Even if the Triple Bogey counterproposal were entitled to consideration (which, as discussed above, it is not), it should be denied based on a comparative analysis with the Joint Parties' counterproposal. The Commission's Rules require that conflicting proposals be compared under its allotment priorities as set forth in Revision of *FM* Assignment Policies and Procedures, 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to Priorities (2) and (3). *Id.* In this case, a comparison clearly favors the Joint Parties' counterproposal.

6. The Joint Parties' counterproposal would provide a first fulltime aural service to 58 people (priority 1), a second fulltime aural service to 1,362 people (priority 2), and a first local service to four communities totaling 80,879 (priority 3). These gains are achieved as follows:

- KMCQ relocates from The Dalles, Oregon to Kent, Washington, providing a first local service to Kent (pop. 79,524), but leaving potentially underserved areas in the loss area.
- In order to provide service to the underserved areas resulting from the relocation of KMCQ, new allotments are made at Moro, Oregon, Arlington, Oregon, and Trout Lake, Washington, providing first local services to Moro (pop. 337), Arlington (pop. 524), and Trout Lake (pop. 494), and providing service to white area (pop 58) and gray area (pop. 1362).

7. By contrast, the Triple Bogey counterproposal would provide *no* first fulltime aural service, a second fulltime aural service to only 22 people (priority 2), and a first local service to a community of 53,025 (Priority 3). Because of its larger community population, the Joint Parties' counterproposal is favored. *See Revision of FM Assignment Policies and Procedures, supra; Elberton and Lavonia, Georgia*, 15 FCC Rcd 12751 (2000); *Powhatan and Goochland, Virginia*, 12 FCC Rcd 3191 (1997); and *Obion and Tiptonville, Tennessee*, 7 FCC Rcd 2644 (1992). Triple Bogey claims that its proposal would produce additional service gains, but these claims are illusory. Triple Bogey's counterproposal consists only of the reallocation of KDUX from Aberdeen to Shoreline, Washington *and the spectrum changes necessary to effectuate that reallocation*: a substitution and power reduction at Bellingham, and a substitution at Forks, Washington. These changes together result in only one first local service and service to a small gray area. The remainder of Triple Bogey's proposal is unrelated to the KDUX reallocation and

unnecessary for its effectuation. First, Triple Bogey's proposed allotments at Moro, Arlington, and Trout Lake are irrelevant to its counterproposal. While these three allotments are a necessary part of the Joint Parties' counterproposal (to cover unserved areas), they are completely unrelated to Triple Bogey's counterproposal since they fall within KMCQ's present service area, not KDUX's. If Triple Bogey were permitted to artificially inflate the public interest benefits of its counterproposal by adopting these three allotments, there would be nothing to stop it from proposing other unrelated new allotments anywhere in the country and claiming additional white area coverage as well. Second, Triple Bogey's proposed upgrade at Hoquiam, Washington is contingent upon the KDUX relocation, and not a necessary part of its counterproposal. Similarly, Channel 284C2 becomes available for use at Hoquiam *only* when Channel 283C2 is deleted at Aberdeen. However, the Commission does not accept contingent proposals such as this one. See *e.g.*, Oxford and New *Albany*, Mississippi, 3 FCC Rcd 615, 617 n.2 (1988), recon. denied, 3 FCC Rcd 6626 (1988) and Okmulgee, Oklahoma, *supra* at note 2. Accordingly, a Hoquiam allotment is not properly considered in this proceeding.

8. Finally, Triple Bogey's proposed allotment of Channel 285A at Fossil, Oregon is also unrelated to the KDUX relocation and unnecessary for its effectuation. Unlike Moro, Arlington, Trout Lake, and Hoquiam, which are not counterproposals at all, the Fossil proposal is actually a separate counterproposal. See Indian Springs, Nevada, *et al.*, 14 FCC Rcd 10568 (1999) (a counterproposal must be mutually exclusive in the context of the proceeding). It is a counterproposal because Channel 285A at Fossil is mutually exclusive with the Joint Parties' proposed Channel 283C1 at Moro. But the Fossil proposal is unrelated to the KDUX relocation. The Commission could grant either one without the other. Accordingly, a first local service at Fossil, along with its accompanying white and gray area coverage, cannot be attributed to the

KDUX relocation but must stand on its own merits. The Fossil proposal would provide a first local service to a community of 1,726. It would cover a white area containing 168 people and a gray area containing 703 people. However, there are at least five other channels available for allotment to Fossil (Channels 247A, 257A, 265A, 276A and 295A) which would not conflict with the proposed Moro allotment. See attached Engineering Study. Thus, there is no reason to allot Channel 285A at Fossil at the expense of allotting Channel 283C1 to Moro.

II. The New Northwest Counterproposal Can Be Granted Independently with the Substitution of an Alternate Channel, but if an Alternate Channel Were Not Available It Would Compare Unfavorably to the Joint Parties' Counterproposal.

9. New Northwest proposes to relocate KAST-FM from Astoria to Gladstone, Oregon, changing its channel from Channel 225C1 to 226C3. Channel 226C3 at Gladstone is mutually exclusive with the Joint Parties' proposed allotment of Channel 226A at Trout Lake, Washington. However, New Northwest proposes an alternate channel, Channel 236A, that can be allotted to Trout Lake to remove the conflict.

10. If, for some reason, Channel 236A cannot be allotted to Trout Lake and the conflict between the New Northwest counterproposal and the Joint Parties' counterproposal, the Joint Parties' counterproposal would be favored under the Commission's allotment priorities. New Northwest's proposal would provide a first local service to two communities totaling 12,002 people (Gladstone, Oregon, pop. 11,438; and Manzanita, Oregon, pop. 564).⁵ It would not provide service to any populated white or gray areas. By contrast, as discussed above, the Joint Parties' proposal would provide a first local service to four communities totaling 80,879 people, as well as providing service to a white area containing 58 people and a gray area containing 1,362 people. *See Revision of FM Assignment Policies and Procedures, supra.*

III. The Two Hearts Counterproposal Can Be Granted Independently with the Substitution of an Alternate Channel, but if an Alternate Channel Were Not Available It Would Compare Unfavorably to the Joint Parties' Counterproposal.

11. Two Hearts proposes to relocate Station KHSS(FM) from Walla Walla to College Place, Washington, and upgrade its channel from Channel 264C3 to 264C2.6 In order to allot Channel 264C2 to College Place, Two Hearts proposes to substitute Channel 261A for Channel 263A at Hermiston, Oregon. The Hermiston allotment conflicts with the Joint Parties' proposal to allot Channel 261C2 at Arlington, Oregon. However, Two Hearts notes that an alternate channel, Channel 263C2 can be allotted to Arlington at the same reference coordinates, which would remove the conflict between its counterproposal and that of the Joint Parties.

12. If for some reason Channel 263C2 cannot be allotted to Arlington and the conflict between the Two Hearts counterproposal and the Joint Parties' counterproposal cannot be removed, the Joint Parties' counterproposal would be favored under the Commission's allotment priorities. Two Hearts' proposal would provide a first local service to College Place, Washington (pop. 7,818). It would not provide service to any white or gray areas. By contrast, as discussed above, the Joint Parties' proposal would provide a first local service to four communities totaling 80,879 people, as well as providing service to a white area containing 58 people and a gray area containing 1,362 people. *See Revision of FM Assignment Policies and Procedures, supra.*

IV. Conclusion

The Joint Parties' counterproposal should be granted. The only other proposal with which it remains in conflict, the Triple Bogey counterproposal, is defective. In any event, under

⁵ New Northwest proposed Channel 236A at Trout Lake only as a means of resolving the conflict between the two proposals. That channel is not connected or required to effectuate the remainder of the New Northwest proposal.

the Commission's allotment priorities, the Joint Parties' counterproposal would be favored over each of the remaining counterproposals

Respectfully submitted,

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March 25, 2003

⁶ As discussed above, the Commission did not list the Two Hearts counterproposal in its Public Notice in this proceeding.

TECHNICAL EXHIBIT
IN SUPPORT OF REPLY COMMENTS
IN THE NOTICE OF PROPOSED RULE MAKING IN
MB DOCKET NO. 02-136
AMENDMENT OF SECTION 73.202(b), TABLE OF FM ALLOTMENTS
THE DALLES, OREGON AND KENT, WASHINGTON

Technical Narrative

This technical exhibit has been prepared on behalf of FM stations KMCQ, channel 283C, The Dalles, Oregon and KAFE, channel 282C, Bellingham, Washington and First Broadcasting Company, L.P. (Joint Parties") in support of reply comments (herein "Reply Comments") in the Notice of Proposed Rule Making in MB Docket No. 02-136 (herein "NPRM").

Two parties filed comments opposing the Joint Parties' proposal to allot channel 283C2 to Kent, Washington: Mercer Island School District and Peninsula School District No. 401 (herein "School Districts") and the City of Gig Harbor (herein "Gig Harbor"). In addition, three parties filed counterproposals to the Joint Parties' proposal to allot channel 283C2 to Kent: Triple Bogey, LLC, MCC Radio, LLC and KDUX Acquisition, LLC (herein "Counter Petitioners"); New Northwest Broadcasters, LLC (herein "NNB"); and Two Hearts Communications, LLC (herein "Two Hearts").

The purpose of this technical exhibit is to address the Counter Petitioners. Specifically, the Counter Petitioners propose to allot channel 285A to Fossil, Oregon which conflicts with the Joint Parties proposal to allot channel 283C1 to Moro, Oregon. However, as demonstrated below, channel 285A is available at Fossil with an 11 km site restriction which would eliminate the conflict with the Joint Parties channel 283C1 proposal at Moro, Oregon. In addition, five channels are available as Class A assignments at Fossil from the allotment reference point specified by the Counter Petitioners, namely, channels 247A, 257A, 265A, 276A and 295A. Finally, channel 295 is also available as a Class C2 assignment at Fossil from the allotment site specified by the Counter Petitioners.

The attached Figure 1A is a tabulation of required separations pertinent to use of channel 285A at Fossil, Oregon from a site located 11 km from the Fossil reference point. The reference site complies with the Commission's minimum distance separation requirements contained in section 73.207 to all existing, authorized and proposed stations and allotments, including the Joint Parties proposal to allot channel 283C1 to Moro, Oregon. Operation from the reference site will provide the requisite city grade signal to all of Fossil.

Figure 1B is a map showing the area to locate channel 285A at Fossil in compliance with the Commission's minimum distance separation requirements and city coverage requirements based on maximum Class A facilities (ERP 6 kW/HAAT 100 m). The channel 285A alternate allotment reference point specified herein has also been shown on Figure 1B along with the allotment reference specified by the Counter Petitioners. The Fossil city limits shown on Figure 1B were obtained from a map contained in the 2000 U.S. Census of Population.

Five additional channels are also available as Class A assignments at Fossil from the allotment reference point specified by the Counter Petitioners. Figures 2, 3, 4, 5 and 6 are tabulations of required separations pertinent to use of channels 247A, 257A, 265A, 276A and 295A at Fossil, Oregon, respectively, based on the allotment reference point specified by the Counter Petitioners. As indicated, the allotment reference point specified by the Counter Petitioners complies with the Commission's minimum distance separation requirements contained in section 73.207 for operation on each channel.

Finally, channel 295C2 is also available for assignment at Fossil from the allotment reference point specified by the Counter Petitioners. Figure 7 is a tabulation of required separations pertinent to use of channels 295C2 at Fossil, Oregon based on the allotment reference point specified by the Counter Petitioners. As indicated, the allotment reference point specified by the Counter Petitioners complies

with the Commission's minimum distance separation requirements contained in section 73.207 for operation on each channel.

Conclusion

Channel 285A is available at Fossil with an 11 km site restriction which would eliminate the conflict with the Joint Parties channel 283C1 proposal at Moro, Oregon. In addition, five channels are available as Class A assignments at Fossil from the allotment reference point specified by the Counter Petitioners, namely, channels 247A, 257A, 265A, 276A and 295A. Finally, channel 295 is available as a Class C2 assignment at Fossil from the allotment site specified by the Counter Petitioners.



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March 24, 2003

CDBS FM SEPARATION STUDY

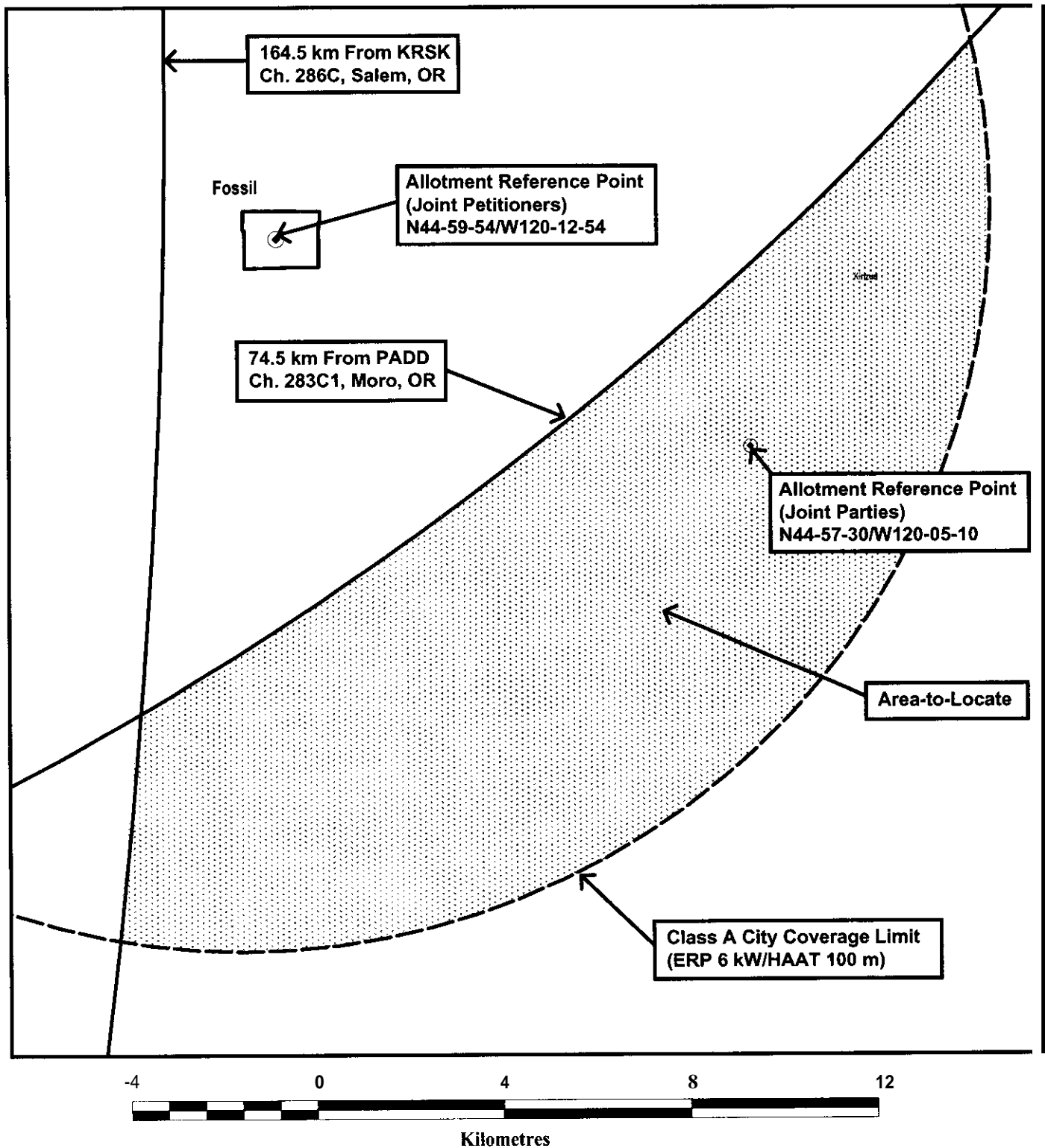
Job Title: Proposed Ch. 285A, Fossil, Oregon
 Channel: 285 A

Separation Buffer: 32 km
 Coordinates: 445730 1200510

Call Id	City St	File Status	File Num	Channel Freq	ERP HAAT	DA Id	Latitude Longitude	73 215	Bear	Dist. (km)	Req. (km) 215 207
	MORO	RM		283 C1	0.000		45-29-08		319.5	77.49	69.0 75.0
	OR ADD C	bg-20		104.5			120-43-54			2.49	Close
	MORO	RM		283 C1	0.000		45-29-38		320.0	78.10	69.0 75.0
	OR ADD C	10458		104.5			120-43-48			3.10	Close
	THE DALLES	RM		283 C	0.000		45-42-44		316.6	116.24	89.0 95.0
	OR DEL C	bg-20		104.5			121-06-50			21.24	Clear
	THE DALLES	RM		283 C	0.000		45-42-44		316.6	116.24	89.0 95.0
	OR DEL C	10458		104.5			121-06-50			21.24	Clear
KMCQ 41861	THE DALLES	BLH		283 C	100.000		45-42-44		316.6	116.24	89.0 95.0
	OR LIC C	19990512KA		104.5	609		121-06-50			21.24	Clear
KMCQ 41861	THE DALLES	BPH		283 C	100.000	N	45-42-44	N	316.6	116.25	89.0 95.0
	OR CP C	19990512IC		104.5	609		121-06-51			21.25	Clear
KCMB 50635	BAKER	BLH		284 C	100.000	N	45-07-26	N	83.4	182.63	142.0 165.0
	OR LIC C	19880719KB		104.7	532		117-46-48			17.63	Clear
	FOSSIL	RM		285 A	0.000		44-59-54		293.7	11.10	92.0 115.0
	OR ADD C	bg-22		104.9			120-12-54			-103.90	Short ¹
KRSK 68213	MOLALLA	BMLH		286 C	100.000	N	45-00-35	N	272.6	177.70	142.0 165.0
	OR APP C	20011015AGT		105.1	576		122-20-17			12.70	Close
	MOLALLA	RM		286 C	0.000		45-00-35		272.6	177.70	142.0 165.0
	OR RSV C	10072		105.1			122-20-17			12.70	Close
KRSK 68213	SALEM	BMLH		286 C	100.000	N	45-00-35	N	272.6	177.70	142.0 165.0
	OR LIC C	19990521KA		105.1	576		122-20-17			12.70	Close

¹ Site proposed by Joint Petitioners for channel 285A at Fossil

Figure 1B



**AREA-TO-LOCATE
CHANNEL 285A
FOSSIL, OREGON**

Figure 2

CDBS FM SEPARATION STUDY

Job Title: Proposed Ch. 247A, Fossil, Oregon
 Channel: 247 A

Separation Buffer: 32 km
 Coordinates: 445954 1201254

Call	City	File	Channel	ERP	DA	Latitude	73	Bear	Dist.	Req. (km)
KXRX	WALLA WALLA	BLH	246 C	50.000	N	45-59-04	N	54.8	193.89	142.0 165.0
16727	WA LIC C 7497		97.1	408		118-10-08			28.89	Clear
KNLR	BEND	BLH	248 C1	97.000	N	44-04-38	N	221.2	135.40	111.0 133.0
65261	OR LIC C 19850114LW		97.5	163		121-19-49			2.40	close

CDES FM SEPARATION STUDY

Job Title: Proposed Ch. 257A, Fossil, Oregon
Channel: 257 A

Separation Buffer: 32 **km**
Coordinates: 445954 1201254

Call Id	City St	File Status	File Num	Channel Freq	ERP HAAT	DA Id	Latitude Longitude	73 215	Bear	Dist. (km)	Req. (km) 215 207
	THE DALLES	RM		256 C3	0.000	N	45-41-01	N	323.1	95.72	72.0 89.0
	OR ADD C	8741		99.1			120-57-17			6.72	Close
950825	WALLA WALLA			256 C1	0.000	N	45-57-21	N	47.7	159.97	111.0 133.0
77751	WA VAC C			99.1			118-41-15			26.97	Clear
	WALLA WALLA	RM		256 C1	0.000		45-57-22		47.7	160.05	111.0 133.0
	WA DEL C	10398		99.1			118-41-11			27.05	Clear
	BURBANK	RM		256 C1	0.000		45-57-22		47.7	160.05	111.0 133.0
	WA ADD C	10398		99.1			118-41-11			27.05	Clear
KUJ-FM	WALLA WALLA	BPH		256 C1	100.000	N	45-57-22	N	47.7	160.05	111.0 133.0
77177	WA CP C	19990916AAJ		99.1	225	28134	118-41-11			27.05	Clear

CDBS FM SEPARATION STUDY

Job Title: Proposed Ch. 265A, Fossil, Oregon
 Channel: 265 A

Separation Buffer: 32 km
 Coordinates: 445954 1201254

Call Id	City St	File Nm	Channel Freq	ERP HAAT	DA Id	Latitude Longitude	73 215	Bear	Dist. (km)	Req. (km) 215	207
	ARLINGTON	RM	263 C2	0.000		45-43-04		1.0	79.97	49.0	55.0
	OR ADD C	bg-19	100.5			120-11-53			24.97	Clear	
KMGX 59691	BEND	BLH	264 C1	50.000	N	44-04-40	N	221.2	135.36	111.0	133.0
	OR LIC C	5892	100.7	158		121-19-49			2.36	Close	
KARY-F 53674	GRANDVIEW	BLH	265 C2	6.900	N	46-29-12	N	5.6	166.24	143.0	166.0
	WA LIC C	19971010KH	100.9	387		120-00-12			0.24	Close	

One-Step Application from Channel 265C3, Proposed as Class B to Canada 960904-Accepted by
 Canada 961127

CDBS FM SEPARATION STUDY

Job Title: Proposed Ch. 276A, Fossil, Oregon

Separation Buffer: 32 km

Channel: 276 A

Coordinates: 445954 1201254

Call	City	File	Channel	ERP	DA	Latitude	73	Bear	Dist.	Req. (km)
Id	St	Status	Num	Freq	HAAT	Id	Longitude	215	(km)	215 207
KSJJ	REDMOND	BLH	275 C1	100.000	N	44-02-48	N	225.1	148.78	111.0 133.0
63433	OR LIC C	19941108KA	102.9	270		121-31-53			15.78	Close

CDBS FM SEPARATION STUDY

Job Title: Proposed Ch. 295A, Fossil, Oregon
 Channel: 295 A

Separation Buffer: 32 km
 Coordinates: 445954 1201254

Call	City	File	Channel	ERP	DA	Latitude	73	Bear	Dist.	Req.	(km)
<u>Id</u>	<u>St</u>	<u>Status</u>	<u>Nm</u>	<u>Freq</u>	<u>HAAT</u>	<u>Id</u>	<u>Longitude</u>	<u>215</u>	<u>(km)</u>	<u>215</u>	<u>207</u>

There are no stations for this study

CDBS FM SEPARATION STUDY

Job Title: Proposed Ch. 295C2, Fossil, Oregon
 Channel: 295 C2

Separation Buffer: 32 km
 Coordinates: 445954 1201254

Call	City	File	Channel	ERP	DA	Latitude	73	Bear	Dist.	Req.	{km}
Id	St	Status	Num	Freq	HAAT	Id	Longitude	215	{km}	215	207
KLTH	LAKE OSWEGO	BLH	294 C	100.000	N	45-30-58	N	287.2	205.86	176.0	188.0
4115	OR LIC C	19970708KC	106.7	440		122-43-59			17.86	Clear	

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy and Bacon, do hereby certify that I have on this 25th day of March, 2003 caused to be mailed by first class mail, postage prepaid, copies of the foregoing **“REPLY COMMENTS”** to the following:

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